**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL APPLICATION NO.6424 OF 2005**

Mr. Azad Babu More ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri P.R. Dave for the Applicant.
Shri R.Y. Mirza, A.P.P. for the Respondent.

**CORAM : A. S. OKA, J.**
**DATE : OCTOBER 04, 2005.**

**P.C.:**

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. Offence has been registered against the Applicant under section 302 of the Indian Penal Code. The Applicant is working as a senior Mukadam with Mumbai Muncipal Corporation. The allegation is that another employee of Municipal Corporation Vilas Kamble who is deceased, came in the mid night near a chowky of the Municipal Corporation. He tried to enter the chowky. At that time the deceased was intoxicated. On the instructions of the Applicant, the door of the chowky was bolted from inside for preventing the entry of the deceased. However, the deceased kept on banging the door. The allegation is that the Applicant assaulted the deceased by kicks and fist blows as a result of which the deceased succumbed to injuries.

2. The Advocate for the Applicant submitted that on plain reading of the statements of the witnesses and F.I.R., section 302 of the Indian Penal code cannot be applied. He pointed out that version of the witnesseses is inconsistent. The learned A.P.P. has brought to my notice various statements recorded during the course of investigation and opposed the Application.

3. I have considered the submissions. Even according to the prosecution case, the deceased had consumed alcohol at relevant time and attempted to enter chowky of the Mumbai Muncipal Corporation. Perusal of the statements of the witnesses show that some of them are not sure whether it was the Applicant who assaulted the deceased. Taking the prosecution case as it is and after considering the injuries reflected in the Post Mortem Notes, it is obvious that at this it is very difficult to come to the conclusion that section 302 of the Indian Penal Code will apply. There is nothing on record to show that there was any intention on the part of the Applicant to kill the deceased.

4. Investigation has been completed. The Applicant is an employee of the Mumbai Muncipal

Corporation having no criminal antecedents. The learned Additional Sessions Judge rejected the Application mainly on the ground that there is every possibility of the Applicant of tampering with the witnesses as most of the witnesses are working as sweepers with the Municipal Corporation and whereas the Applicant is working as supervisor. Considering the version of various witnesses, Application for bail cannot be rejected on the ground mentioned by the learned Additional Sessions Judge. Stringent condition can be imposed to ensure that the Applicant does not misuse the liberty.

5. Hence, I pass the following order:

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with **C.R.No.133 of 2005 Azad Maidan Police Station,** subject to furnishing a personal bond of **Rs.15,000/-** with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will report to the concerned Police Station once in a week till the conclusion of the

trial.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

**JUDGE**